

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PROVIDENT PRECIOUS METALS, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:13-cv-02942-M
	§	
NORTHWEST TERRITORIAL MINT, LLC,	§	
	§	
<i>Defendant.</i>	§	

**DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT FOR
DECLARATORY JUDGMENT AND RELIEF**

For its Answer to Plaintiff Provident Precious Metals, LLC’s (“Provident”) Complaint for Declaratory Judgment and Relief, Defendant Northwest Territorial Mint, LLC (“NWTM”) hereby admits, alleges, and denies as follows:

NATURE OF THE ACTION

1. Answering Paragraph 1 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations contained in the paragraph.

2. Answering Paragraph 2 of the Complaint, NWTM admits that it has asserted that Provident is infringing its copyright, trademark, and trade dress rights and that Provident has denied those assertions. The remaining allegations in the paragraph are legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the remaining allegations contained in the paragraph.

THE PARTIES

3. Answering Paragraph 3 of the Complaint, NWTM is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the paragraph. For this reason, NWTM denies the allegations of the paragraph.

4. Answering Paragraph 4 of the Complaint, NWTM admits that it is a limited liability company organized under the laws of the State of Washington and is registered to do business in the State of Texas as a foreign entity with registration #801425366 with its principal place of business located at 723 South Cherry St., Tomball, Texas 77375. NWTM's designated agent for service of process in the State of Texas is Fredreck S. Hudgens, who has an address at 720 West Main Street, Tomball, Texas 77375. Unless specifically admitted herein, NWTM denies the remaining allegations of Paragraph 4.

JURISDICTION AND VENUE

5. Answering Paragraph 5, NWTM states that the allegations in this Paragraph constitute legal conclusions to which a responsive pleading is not required; however, NWTM, admits the Complaint purports to set forth an action arising under the laws stated therein. NWTM admits that subject-matter jurisdiction is proper as to this action only pursuant to 28 U.S.C. §§ 1331 and 1338. Any other allegations not specifically admitted herein are denied.

6. Answering Paragraph 6, NWTM states that the allegations in this Paragraph constitute legal conclusions to which a responsive pleading is not required. NWTM admits that it maintains an office and registered agent in the State of Texas. Any other allegations not specifically admitted herein are denied.

7. Answering Paragraph 7 of the Complaint, NWTM alleges that these paragraphs contain legal conclusions to which no response is required. However, NWTM admits that it does business in the State of Texas and this District. Any other allegations not specifically admitted herein are denied.

FACTUAL BACKGROUND

8. Answering Paragraph 8 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

9. Answering Paragraph 9 of the Complaint, NWTM is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9. For this reason, NWTM denies the allegations contained in Paragraph 9.

10. Answering Paragraph 10 of the Complaint, NWTM is a manufacturer and selling of weapons ammunition made from metals with intrinsic value, including, but not limited to, silver. Any allegations not specifically admitted herein are denied.

11. Answering Paragraph 11 of the Complaint, NWTM admits that certain ammunition shapes have been replicated for novelty and collection purposes in metals with intrinsic value, such as gold, silver, and copper. Any allegations not specifically admitted herein are denied.

12. Answering Paragraph 12 of the Complaint, NWTM is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 12. For this reason, NWTM denies the allegations of Paragraph 12.

DEFENDANT'S ACTS COMPRISING ACTUAL CONTROVERSY

13. Answering Paragraph 13 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

14. Answering Paragraph 14 of the Complaint, NWTM admits that there was a telephone conversation between NWTM and Provident on July 15, 2013 wherein NWTM informed Provident that Provident was infringing upon NWTM's intellectual property rights. NWTM denies the remaining allegations of the paragraph.

15. Answering Paragraph 15 of the Complaint, NWTM asserts that the document referenced in the paragraph speaks for itself. NWTM denies every allegation in the paragraph inconsistent with the document referenced.

16. Answering Paragraph 16 of the Complaint, NWTM states that the allegations in this Paragraph constitute legal conclusions to which a responsive pleading is not required. To the extent a response is required, NWTM denies the allegations of Paragraph 16.

FIRST CLAIM FOR RELIEF

(Invalidity of Copyright)

17. Answering Paragraph 17 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

18. Answering Paragraph 18 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 18.

19. Answering Paragraph 19 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 19 and denies that Provident is entitled to the relief requested therein.

SECOND CLAIM FOR RELIEF

(Non-Infringement of Copyright)

20. Answering Paragraph 20 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

21. Answering Paragraph 21 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 21.

22. Answering Paragraph 22 of the Complaint, NWTM denies the allegations of Paragraph 22 and denies that Provident is entitled to the relief requested therein.

THIRD CLAIM FOR RELIEF

(Unenforceability of Trademark – Word Mark)

23. Answering Paragraph 23 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

24. Answering Paragraphs 24 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 24.

25. Answering Paragraph 25 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 25 and denies that Provident is entitled to the relief requested therein.

FOURTH CLAIM FOR RELIEF

(Unenforceability of Trademark and Trade Dress – Product Shape)

26. Answering Paragraph 26 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

27. Answering Paragraphs 27 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 27.

28. Answering Paragraph 28, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 28 and denies that Provident is entitled to the relief requested therein.

FIFTH CLAIM FOR RELIEF

(Unenforceability of Trademark and Trade Dress – Product Packaging)

29. Answering Paragraph 29 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

30. Answering Paragraph 30 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 30.

31. Answering Paragraph 31 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 31 and denies that Provident is entitled to the relief requested therein.

SIXTH CLAIM FOR RELIEF

(Non-Infringement of Trademarks and Trade Dress)

32. Answering Paragraph 32 of the Complaint, NWTM realleges its responses to the previous paragraphs as though set forth fully herein.

33. Answering Paragraph 33 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 33.

34. Answering Paragraph 34 of the Complaint, NWTM alleges that this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, NWTM denies the allegations of Paragraph 34 and denies that Provident is entitled to the relief requested therein.

REQUEST FOR RELIEF

NWTM denies that Plaintiff is entitled to any of the relief sought in Plaintiff's Request for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint and each cause of action within it fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint and each cause of action, including equitable relief sought, within it fail due to Plaintiff's unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has prior and superior rights with regard to the trademarks, copyrights, trade dress, and other intellectual property referenced in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is unable to establish any rights whatsoever to the trademarks, copyrights, trade dress, and other intellectual property referenced in the Complaint.

Discovery in this case is continuing, and NWTM reserves the right to raise additional affirmative defenses as it becomes aware of those defenses.

RELIEF REQUESTED

NWTM requests that this Court enter judgment in its favor and grant the following relief:

- a. Deny all relief requested by Plaintiff in view of any or all of the denials or affirmative defenses set forth above;
- b. Award NWTM such other and further relief as the Court may deem just and proper.

Dated: September 6, 2013

Respectfully submitted,

/s/ Darin M. Klemchuk

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned certifies that this pleading was filed electronically in compliance with Local Rule CV-5(a). As such, this document has been served on all counsel who have consented to electronic service.

/s/ Darin M. Klemchuk
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